

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KEITH L. NASH,

Plaintiff,

v.

GARY E. LUCAS,

Defendant.

CASE NO. 3:14-CV-05851-RBL-DWC

REPORT AND RECOMMENDATION

Noting Date: July 10, 2015

The District Court has referred this action, filed pursuant to 42 U.S.C. § 1983, to United States Magistrate Judge David W. Christel. Presently before the Court is Defendant Lucas's Motion to Dismiss. Dkt. 21.

Defendant Lucas filed the pending Motion to Dismiss on March 9, 2015, asserting the Complaint failed to state a claim upon which relief could be granted. *See* Dkt. 21. After the Motion to Dismiss was filed, Plaintiff filed a Motion to Amend and a proposed amended complaint. Dkt. 29. In a separate order, the Court granted Plaintiff's Motion to Amend, and Plaintiff's First Amended Complaint has been filed. *See* Dkts. 37, 38.

1 An amended complaint supersedes the original complaint. *Ferdik v. Bonzelet*, 963 F.2d
 2 1258, 1262 (9th Cir. 1992). The original complaint is “treated thereafter as non-existent.” *Loux v.*
 3 *Rhay*, 375 F.2d 55, 57 (9th Cir. 1967) *overruled on other grounds by Lacey v. Maricopa County*,
 4 693 F.3d 896 (9th Cir. 2012). Defendant Lucas’s Motion to Dismiss attacks the original
 5 Complaint, which is now “non-existent.” Therefore, Defendant Lucas’s Motion to Dismiss
 6 became moot with the filing of the First Amended Complaint.

7 Accordingly, the undersigned recommends Defendant Lucas’s Motion to Dismiss be
 8 denied as moot.¹ Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
 9 Procedure, the parties shall have fourteen (14) days from service of this Report to file written
 10 objections. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those
 11 objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time
 12 limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on July 10,
 13 2015, as noted in the caption.

14 Dated this 18th day of June, 2015.

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16 David W. Christel
 17 United States Magistrate Judge

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 24 ¹ The Court notes Defendant Lucas has the right to file a motion to dismiss as to the First Amended Complaint.